

# Finance and Resources Committee

10.00am, Thursday, 23 February 2017

## Winding Up of Usher Hall Charitable Trust

Item number	7.10
Report number	
Executive/routine	
Wards	

### Executive Summary

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The Usher Hall Conservation Appeal (Usher Hall Trust) has served its purpose and it is now proposed to transfer all funds held by the charitable trust to the Usher Hall to contribute to the purchase cost of its new grand piano. This would result in the charity having no assets and therefore the only practical solution would be for the charity to be wound-up.

Following an application to the Office of the Scottish Charity Regulator (OSCR), consent to wind up/dissolve the charitable trust was received on 19 December 2016.

This report therefore seeks approval for the formal winding up of the charitable trust and the transfer of the remaining assets of the charitable trust to the Usher Hall.

### Links

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Coalition Pledges	<a href="#">P31</a> , <a href="#">P42</a>
Council Priorities	<a href="#">C06</a> , <a href="#">C10</a>
Single Outcome Agreement	<a href="#">S02</a> , <a href="#">S03</a>

## Winding Up of Usher Hall Charitable Trust

### 1. Recommendations

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- 1.1 Members of the Finance and Resources Committee are asked to:
  - 1.1.1 Approve the use of the remaining funds of the Usher Hall Trust to contribute to the purchase cost of the new grand piano at the Usher Hall; and
  - 1.1.2 Approve the formal winding up of Usher Hall Trust.

### 2. Background

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- 2.1 The strategy to radically restructure the charitable trusts through a combination of: transfers to suitable external charities; consolidation; and expenditure of capital is almost complete. As per the City of Edinburgh Council Charitable Trusts Trustee's Annual Report and Accounts for the year ended 31 March 2016, future plans included the full disbursement of the remaining funds of the Usher Hall Trust in the 2016/17 financial year.
- 2.2 The Usher Hall has purchased a grand piano in the 2016/17 financial year for £118,875. The Usher Hall Trust seeks to utilise its funds of £68,000 less the 2016/17 governance costs, as a contribution towards this purchase.

### 3. Main report

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- 3.1 As the Usher Hall has now purchased the grand piano, it is proposed that the Usher Hall Trust fulfils its purpose and assists in covering the cost of the purchase. The principal objectives of the Trust are "the promotion of the Arts" with the power to "promote, advance, encourage, manage and effect either on its own, through gifts or in conjunction with others, the improvement, maintenance, repair, renewal and conservation of the Usher Hall."
- 3.2 Clause nine of the trust deed of the Usher Hall Trust notes that "should circumstances arise under which a majority of the trustees deem it necessary or expedient for the Trust to be finally wound up and brought to an end, they shall have power and authority to do so and to realise and distribute the whole funds of the Trust."
- 3.3 As the purchase price of the piano exceeds the cash held by the Trust, it is proposed that the full value of cash at bank is transferred to the Usher Hall from the

charitable trust. This would ensure that the clause ten conditions were also met, per Appendix 1.

#### **4. Measures of success**

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- 4.1 Appropriate actions are taken to transfer the funds to the Usher Hall and notification of the winding up of the Trust is provided to OSCR within three months of Committee approval.

#### **5. Financial impact**

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- 5.1 The £68,000 less the annual governance costs (including Audit fee) will be transferred from the Usher Hall Trust to the Usher Hall to assist in covering the cost of the new grand piano.

#### **6. Risk, policy, compliance and governance impact**

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- 6.1 The Finance and Resources Committee's remit includes monitoring of both financial performance and the Council's arrangements to secure best value and continuous improvement.

#### **7. Equalities impact**

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- 7.1 There are no direct equalities and rights implications arising from the report's contents.

#### **8. Sustainability impact**

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- 8.1 There are no impacts on carbon, adaptation to climate change and sustainable development arising directly from this report.

#### **9. Consultation and engagement**

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- 9.1 OSCR have been consulted in the process of receiving consent to wind-up.

#### **10. Background reading/external references**

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- 10.1 [The City of Edinburgh Council Charitable Trusts – Report to those Charged with Governance of the 2015/16 Audit](#)

## Hugh Dunn

Acting Executive Director of Resource

Contact: Liam MacDonald, Accountant

E-mail: [liam.macdonald@edinburgh.gov.uk](mailto:liam.macdonald@edinburgh.gov.uk) | Tel: 0131 469 3174

## 11. Links

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<b>Coalition Pledges</b>	P31 – Maintain our city’s reputation as the cultural capital of the world by continuing to support and invest in our cultural infrastructure.
	P42 – Continue to support and invest in our sporting infrastructure.
<b>Council Priorities</b>	CO6 – Our children’s and young people’s outcomes are not undermined by poverty and inequality.
	C10 – Improved health and reduced inequalities.
<b>Single Outcome Agreement</b>	SO2 – Edinburgh’s citizens experience improved health and wellbeing, with reduced inequalities in health
	SO3 – Edinburgh’s children and young people enjoy their childhood and fulfil their potential
<b>Appendices</b>	Appendix 1 – Usher Hall Conservation Trust - Trust Deed

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**Books of Council and Session**

**Extract Registered 15 May 2000**

TRUST DEED

USHER HALL CONSERVATION TRUST



\*BS-11138\*

EDINBURGH CITY COUNCIL  
DX ED125 EDINBURGH

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AT EDINBURGH the Fifteenth day of May Two thousand the Deed hereinafter reproduced was presented for registration in the Books of the Lords of Council and Session for preservation and is registered in the said Books as follows:-

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## TRUST DEED FOR THE USHER HALL CONSERVATION TRUST



desirous of advancing the Arts in their widest form, Including without prejudice to the foregoing generality, the arts of music, dance, song, opera, plays, films and the graphic arts in all their forms, through the conservation, repair, renewal and maintenance of buildings connected with and providing venues for the performance of the Arts and in particular the Usher Hall, Lothian Road, Edinburgh and other buildings in Edinburgh and considering it is desirable and expedient to set out in the manner afterwritten, the terms, conditions and powers which shall be binding on us and our successors in office as Trustees, (we and our successors hereinafter being referred to as "the Trustees", do HEREBY AGREE to the founding of THE USHER HALL CONSERVATION TRUST.

The principal objects of the Trust shall be the promotion of the Arts for the benefit of the local inhabitants, including in particular the residents of Edinburgh and adjacent communities and the public in Scotland as a whole by the provision of venues in Edinburgh for the performance of the Arts which shall include without prejudice to the foregoing generality concert halls, theatres, cinemas, art galleries and museums.

### TWO POWERS

To these ends, the Trustees may purchase or lease or receive as a gift or otherwise acquire such property as they think desirable for the advancement of the Trust's objects or any of them. In particular, and without prejudice to the foregoing generality, the Trustees may in furtherance of the Objects but not otherwise, the Trustees shall have the following powers:

- (a) . To promote, advance, encourage, manage and effect either on its own, through gifts or in conjunction with others, the improvement, maintenance, repair, renewal and conservation of the Usher Hall and other buildings in Edinburgh which may be used as venues for the Arts.
- (b) To acquire whether through purchase, lease or otherwise on such terms and conditions as the trustees may deem appropriate such property as case may be and if necessary to construct, develop, adapt, modify, renovate and maintain such for the advancement of the Objects of the Trust or any of them and to enter into all or any contracts in connection thereto;
- (c) To assist, promote, implement and encourage others to, to undertake the protection, repair, maintenance, conservation and protection of historic buildings and other buildings, artifacts and materials pertaining to the Usher Hall and other buildings associated with the Arts in Edinburgh;

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- (d) To enter into agreements with national, local authorities and other bodies for the furtherance of the Objects of the Trust.
- (e) To purchase, take on lease or in exchange by way of excambion or by other means acquire and hold any feudal, freehold, leasehold or other property or lands, tenements and hereditaments and any rights, privileges, servitudes and easements over or in respect of any property, and to manage, maintain, improve, develop and turn the same to account, to expend money in maintaining, improving or adding to the marketable value of same or in the demolition of buildings and other erections thereon, or in the erection thereon of buildings of such nature and for such purposes as to the Trustees deem proper, and to sell, feu, sub-divide, let or otherwise dispose of, or deal with, all or any part of such property or rights;
- (f) Purchase, sell, lease or take on lease, any such assets as is or are necessary for the further promotion of the objects of the Trust;
- (g) To purchase, take on lease, acquire and use for any purpose of the Trust any machinery, stock - in - trade and other property, rights, privileges and interests, (including patents, licences, copyrights, trade marks, service marks, secret processes, designs, goodwill and concessions), and other rights of whatever kind, real or heritable and personal or movable or any of them; and to hold, exercise, develop, improve, sell, lease, hire, exchange, mortgage, alter, pledge or otherwise deal with or dispose of same;
- (h) To pay all preliminary expenses of the formation of the Trust and of any company promoted or formed by the Trust in which the Trustees are or may competently be interested;
- (i) To borrow or raise or secure the payment of money in such manner as the Trustees think fit, and in particular to secure the repayment of any money borrowed, raised or owing, by mortgage, charge, standard security or lien upon the whole or any part of the Trust's property or assets (whether present or future) and also by a similar mortgage charge or lien to secure and guarantee the performance of the Trust of any obligation or liability it may undertake;
- (j) To sell, dispose of, transfer the business or undertaking of the Trust, or any branch or part thereof or any property or assets thereof, in consideration of payment in cash or royalties or other perpetual or terminable payments, or in shares (partly or fully paid up) or debentures, debenture stock, or other securities of any other company or in one or other or all of such modes of payment or in such manner and for such consideration as the Company may think fit;
- (k) To promote or concur in promoting any companies for the purposes of acquiring all or any part of the property, rights and liabilities of the company or for any other purpose which may seem directly or indirectly calculated to benefit the Trust and the furtherance or attainment of the Objects of the Trust or any of them;

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- (l) To enter into partnership, arrangement for sharing of profits, union of interests reciprocal concession or co-operation with persons, companies or societies carrying on or about to carry on any business or branch of business or transaction capable of being conducted so as directly or indirectly to benefit the Trust and the furtherance or attainment of the Objects of the Trust or any of them;
- (m) To adopt such means of making known the purposes of and the services and facilities provided by the Trust and keeping the same before the general public as may seem expedient and to procure to be prepared, printed, published or issues for the promotion of this object such papers, books, leaflets, periodicals, pamphlets or advertisements as may be deemed necessary or appropriate;
- (n) To remunerate any person, association, firm or company for services rendered or to be rendered to the Trust or in or about the conduct of the Trust's affairs upon such terms and conditions as the Trustees may deem fit;
- (o) To establish, subsidise, promote, co-operate or affiliate with or become affiliated to, or manage or lend money or other assistance to any association, society or other body, corporate or unincorporated, established for charitable purposes only, and for the purposes of promoting the Objects of the Trust or any of them;
- (p) To retain or employ professional and technical advisers or workers in connection with the Objects of the Trust or any of them, and to pay such fees, costs or other monies for or in connection with their services as may be thought expedient by the Trustees and to establish, maintain and contribute to any pension or superannuation fund for the benefit of, and to give or procure the giving of any donation, pension, allowance or remuneration for or towards the insurance of any individual, who is or was at any time in the employment of the Trust and the widow/widower, relatives and dependants of any such individual;
- (q) To subscribe for, take, purchase or otherwise acquire and hold shares or other interest in or securities of any other company which may seem directly or indirectly calculated to benefit the Trust and the furtherance or attainment of the Objects of the Trust or any of them;
- (r) To act as trustees or managers of any property, endowment, legacy, bequest or gift for charitable purposes and to undertake and execute any charitable trusts which may lawfully undertaken by the Trustees and may be necessary to the Objects of the Trust or any of them;
- (s) To obtain finance whether by fund-raising, appeals, grants or otherwise, to accumulate funds for such periods as is allowed by law, and to receive voluntary donations, bequests and subscriptions for the Objects of the Trust or any of them;
- (t) To invest the moneys of the Trust not immediately required for the Objects of the Trust in or upon such investments, securities or property as the Trustees shall deem fit;

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- (u) To establish and support or aid in the establishment and support of any charitable associations or institutions and to subscribe or guarantee money for charitable purposes in any way connected with or calculated to further the Objects of the Trust or any of them;
- (v) To purchase and maintain insurance against any risk, loss or liability to which the Trustees may be subject;
- (w) To purchase and maintain insurance for, or for the benefit of, any persons who are or were at any time Trustees, officers, employees or auditors of the Company or who are or who were at any time trustees of any pension fund in which employees of the Trust are interested including (without prejudice to the foregoing generality) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution and/or discharge of their duties, powers or offices in relation to the Trust or pension fund and to such extent as may be permitted by law or otherwise to indemnify or to exempt any such person against or from such liability;
- (x) To promote any Act of Parliament, Provisional Order and other authority to enable the Trust to carry out its Objects, alter its constitution and to achieve any other purpose which may promote the Trust's interests, and to oppose or object to any application or proceedings which may prejudice the Trust's interests;
- (y) To do all such other things as may be incidental or conducive to the attainment of the Objects of the Trust or any of them.

The powers set forth in each sub-clause of this Clause shall not be restrictively construed but the widest interpretation shall be given thereto, and they shall not, except where the context expressly so requires, be in any way limited or restricted by reference to or inference from any other power or powers set forth in any subclause or from the name of the Trust. None of such sub-clauses or the power or powers thereby conferred shall be deemed subsidiary or ancillary to the powers mentioned in any other sub-clause.

## THREE **PROPERTY**

The income and property of the trust, wheresoever derived shall be applied solely towards the promotion of the objects of the Trust as set forth in this Deed: no portion thereof shall be paid or transferred directly or indirectly by way of profit to the Trustees, provided that nothing herein shall prevent the payment, in good faith, of reasonable and proper expenses to any Trustee, in return for services actually rendered to the Trust, nor prevent the payment of interest at a reasonable rate on money lent to the Trust or reasonable and proper rent for premises let by any Trustee to the Trust.

## FOUR **POWERS OF TRUSTEES**

The Trustees shall have all powers, privileges and immunities enjoyed by gratuitous Trustees in Scotland according to Scottish law from time to time prevailing. The Trustees shall incur no personal responsibility to or on account of anything done or omitted to be done in the execution or intended execution of their powers as trustees

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or for any alleged or actual actings beyond their powers as Trustees or for any loss or any unauthorised or illegal or, neglected investment or on any account whatsoever, actual wilful fraud alone excepted.

## FIVE APPOINTMENT OF TRUSTEES

The number of Trustees serving at any one time shall not be less than two and not more than six. The City of Edinburgh Council and their statutory successors in recognition of the role played by the Council in the promotion of the Arts generally within the City of Edinburgh shall have the right to nominate two of the six Trustees. The Two Nominated Trustees shall serve as Trustees for a period of three years from the date of their nomination and shall take all necessary steps to demit the office of Trustee at the end of their three year period. Nothing in the foregoing shall prevent a Nominated Trustee continuing to serve as further period as a Nominated Trustee if renominated by the City of Edinburgh Council and their statutory successors. Continuing Trustees shall have the power to assume new Trustees, who have given their previous consent in writing to be being so assumed, and any entry in the minute book of the Trust will be sufficient evidence of the assumption of a new Trustee. The Trustees shall appoint from amongst their own number, a Chair, Vice Chair, Secretary and Treasurer. The term "Trustees", throughout this Deed shall mean not only the original signatories to this Trust Deed which has led to the establishment of the Trust but we and our successors in office who have been assumed Trustees in the manner provided.

## SIX RESIGNATION OF TRUSTEES

Any Trustee may be letter of resignation endorsed in the Minute Book of the Trust, resign office as Trustee hereunder so long as a minimum of two Trustees hereunder remain in office.

## SEVEN BANK ACCOUNTS

All monies received in any way by the Trustees shall be deposited in a Bank Account(s) in the name of the Trustees for the Trust, the said account(s) being operated on and all cheques, bills, promissory noted and others being signed by two Trustees.

## EIGHT ANNUAL ACCOUNTS

In every calendar year, the trustees shall prepare a Statement of their accounts and intromissions with the trust funds and shall submit the same with relative vouchers for audit to an independent auditor appointed by a majority of the Trustees.

## NINE WINDING UP

Should circumstances arise under which a majority of the trustees deem it necessary or expedient for the Trust to be finally wound up and brought to an end, they shall have power and authority to do so and to realise and distribute the whole funds of the Trust subject only to the immediately following Clause TEN.

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## DISSOLUTION

If upon the winding up or dissolution of the Trust, there remains after the satisfaction of all the Trust's debts and liabilities, any property whatsoever, the same shall not be paid or distributed among the Trustees of the Trust, but shall be given or transferred to some other trust or trusts having charitable objects not dissimilar to the objects of the Trust or to such other charitable organisation as the Trustees may determine, and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed in this Trust. IN WITNESS WHEREOF this typewritten deed consisting of this and the five preceding pages is executed as follows:- It is executed by me, The Right Honourable Eric Milligan, Lord Provost of the City of Edinburgh at Edinburgh on the Third day of August Nineteen hundred and Ninety nine in the presence of Lesley Marion Ellen, City Chambers, High Street, Edinburgh; by me the said Councillor Stephen Cardownie, subscribing his usual signature, "Steve Cardownie", at Edinburgh on the First day of October Nineteen hundred and Ninety nine in the presence of Katherine Fullerton, City Chambers, High Street, Edinburgh; by me, the said Gilbert Baird Archer at Edinburgh on the Eleventh day of August Nineteen hundred and Ninety nine in the presence of Ruth Liness Lothian [REDACTED] by me, the said Douglas Andrew Connel at Edinburgh on the Eighteenth day of August in the presence of Veronica Mary Morris, [REDACTED] [REDACTED] by me, the said Andrew Mark Kerr at Edinburgh on the First day of September Nineteen hundred and Ninety nine in the presence of James Richard Charles Foster, [REDACTED] [REDACTED] and by me, the said Sir John Shaw, CBE at Edinburgh on the Sixteenth day of September Nineteen hundred and Ninety nine in the presence of Andrew David Havell [REDACTED] [REDACTED]